

**REMARKS**

Claims 1-21 are pending in this application. Claims 9 and 11-16 have been amended and claims 22-23 have been added by the present Amendment. Amended claims 9 and 11-16 and new claims 22-23 do not introduce any new subject matter.

Claims 1-8 have been withdrawn from consideration without prejudice pursuant to 37 C.F.R. § 1.142(b), as being drawn to a non-elected invention and have been canceled without prejudice by the present Amendment. In addition, claim 10 has been canceled without prejudice by the present Amendment.

**ALLOWABLE SUBJECT MATTER**

Applicant gratefully acknowledges the Examiner's indication of allowable subject matter in claims 10-14 and claims 16 and 17.

Reconsideration is respectfully requested of the Examiner's objection to claims 11-14, 16 and 17 as being dependent upon a rejected base claim, claim 10 having been canceled. In response to the Examiner's objection, Applicant has rewritten independent claims 9 and 15 to incorporate the allowable subject matter of claims 10 and 16, respectively.

Therefore, Applicant respectfully submits that, in light of the amendments made to independent claims 9 and 15, claims 11-14, 16 and 17 are no longer dependent upon rejected base claims. Accordingly, Applicant respectfully requests that the Examiner withdraw the objection to same.

**REJECTIONS UNDER 35 U.S.C. § 103**

Reconsideration is respectfully requested of the rejection of claims 9, 15, 18, 19 and 21 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,500,724

(“Zurcher”) in view of U.S. Patent No. 6,635,498 (“Summerfelt”). Applicant respectfully submits that for at least the reason of the amendments to independent claims 9 and 15, claims 9 and 15, and claims 18, 19 and 21 dependent from claim 15, are patentable over the cited references.

Applicant has incorporated the allowable subject matter from claims 10 and 16 into claims 9 and 15, respectively.

Accordingly, Applicant respectfully submits that claims 9 and 15 are patentable over the Zurcher in view of Summerfelt. For at least the reason that claims 18, 19 and 21 depend from claim 15, claims 18, 19 and 21 are also submitted to be patentably distinct over the cited references. As such, Applicant requests that the Examiner withdraw the rejection of claims 9, 15, 18, 19 and 21 under 35 U.S.C. §103(a).

Reconsideration is respectfully requested of the rejection of claim 20 under 35 U.S.C. § 103(a) as being unpatentable over Zurcher in view of Summerfelt as applied to claim 15 and further in view of U.S. Patent Application Publication No. 2003/0232481 (“Huang”). Applicant respectfully submits that for at least the reason of the amendment to independent claim 15, claim 20 dependent thereon is patentable over the cited references.

As stated above, Applicant has incorporated the allowable subject matter from claim 16 into claim 15.

Accordingly, Applicant respectfully submits that claim 15 is patentable over the Zurcher in view of Summerfelt as applied to claim 15 and further in view of Huang. For at least the reason that claim 20 depends from claim 15, claim 20 is also submitted to be patentably distinct over the cited references. As such, Applicant requests that the

Examiner withdraw the rejection of claim 20 under 35 U.S.C. §103(a).

**NEW CLAIMS 22-23**

Applicant respectfully submits that new claims 22 and 23 are patentable over the cited references for at least the reasons that: (1) new claim 22 incorporates allowable subject matter, namely the first protection layer pattern and the dielectric layer adjacent the upper electrode being partially etched during etching of the conductive layer; and (2) new claim 23 recites "forming a first contact directly contacting the lower wiring through the second insulation layer", which is not taught by the cited references.

Accordingly, Applicant respectfully submits that new claims 22-23 are in condition for allowance.

An early and favorable reconsideration is earnestly solicited. If the Examiner has any further questions or comments, the Examiner may telephone Applicant's Attorney to reach a prompt disposition of this application.

Respectfully submitted,



Michael F. Morano  
Reg. No. 44,952  
Attorney for Applicant

F. CHAU & ASSOCIATES, LLC  
130 Woodbury Road  
Woodbury, NY 11797  
(516) 692-8888